

RECEIPT # 57205  
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 LOCAL RULE 4.1         
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 BY DPTY. CLK.         
 DATE 7-13-04

Rec #57205  
 7/13/04

UNITED STATES DISTRICT COURT  
 DISTRICT OF MASSACHUSETTS

NEIGHBORHOOD  
 ASSOCIATION OF THE BACK  
 BAY, INC.

Plaintiff

FEDERAL TRANSIT  
 ADMINISTRATION and  
 MASSACHUSETTS BAY  
 TRANSPORTATION  
 AUTHORITY

Defendants

CIVIL ACTION  
 NO.

**04 - 11550 EFH**

COMPLAINT FOR DECLARATORY  
 AND INJUNCTIVE RELIEF

MAGISTRATE JUDGE       

PARTIES

1. Plaintiff Neighborhood Association of the Back Bay, Inc. ("NABB") is a charitable corporation with a principal place of business at 337 Newbury Street, Boston, Massachusetts.

2. Defendant Federal Transit Administration ("FTA") is an administration within the United States Department of Transportation, with a principal place of business at 400 7th Street SW, Washington, D.C. and with a regional office for Region I, which includes Boston, at the Transportation Systems Center, Kendall Square, 55 Broadway Suite 920, Cambridge, Massachusetts.

3. Defendant Massachusetts Bay Transportation Authority ("MBTA") is a body politic and corporate and a political subdivision of the Commonwealth of

Massachusetts, with a principal place of business at 10 Park Plaza, Boston, Massachusetts.

#### JURISDICTION

4. The action arises under 16 U.S.C. §470f, 42 U.S.C. §1983 and under 49 U.S.C. §303, as hereinafter more fully appears. In addition to jurisdiction for the existence of a federal question under 28 U.S.C. §1331, this is a civil action against the United States founded upon Acts of Congress and regulations of executive departments, providing jurisdiction under 28 U.S.C. §1346.

#### AGENCY PROCEEDINGS

5. The MBTA intends to add a new entrance to its Arlington Street Station in Boston, Massachusetts. This proposed entrance includes a stairway and elevator on the north sidewalk of Boylston Street in Boston, between Arlington Street and Berkeley Street, about 120 feet west of Arlington Street.

6. Upon information and belief, the MBTA expects to pay for its proposed new entrance to Arlington Street Station with federal funds from the U.S. Department of Transportation. The MBTA also receives other federal funds.

7. The MBTA's proposed entrance to Arlington Street Station partially obstructs the view of the Arlington Street Church, an historic structure on the corner of Arlington Street and Boylston Street in Boston.

8. Upon information and belief, the Arlington Street Church is a national historic landmark.

9. Upon information and belief, the Arlington Street Church is listed in the National Register of Historic Places.

10. Upon information and belief, the Arlington Street Church is listed in the State Register of Historic Places.

11. Upon information and belief, the Boston Landmarks Commission, a commission within the City of Boston Environment Department, designated the Arlington Street Church a Boston Landmark

12. Upon information and belief, the Arlington Street Church is part of the Back Bay Architectural District, an historic district designated and protected by Massachusetts statutes, St. 1966, c. 625, as amended.

13. The Back Bay of Boston is particularly protected as an architecturally significant historic district by Massachusetts statutes, St. 1966, c. 625, as amended.

14. The Arlington Street Church is a significant historic site.

15. On May 14, 2004, Richard Doyle, the FTA's Regional Administrator for Region I, issued a document entitled Finding of No Significant Impact ("Finding") for the MBTA's proposed new entrance to its Arlington Street Station. Mr. Doyle issued this Finding both under §106 of the Federal Historic Preservation Act (16 U.S.C. §470f) ("§106") and §4(f) of the Department of Transportation Act of 1966 (49 U.S.C. §303) ("§4(f)"). A copy of the Finding is hereto annexed as Exhibit A.

16. Regional Administrator Doyle's Finding stated that the proposed Arlington Street Station entrance

(a) would not adversely affect the historic qualities of the Arlington Street Church

(b) would have no adverse effect on the Back Bay Historic District.

17. Regional Administrator Doyle made his findings of a lack of adverse effect on the historical qualities of the proposed Arlington Street Station entrance despite the following.

(a) The proposed entrance will partially block the view of the Arlington Street Church.

(b) The Finding contains the contradictory statement that another proposed location for the Arlington Street Station entrance was "rejected" "due to its obstruction of the view of this National Historic Landmark Church."

(c) There are other feasible alternative sites, both mentioned in the Finding and not mentioned in the Finding, which do not obstruct the view of the Arlington Street Church or adversely affect any historic site.

(d) The Finding rejected other sites due to the objection of abutting owners (including a site with a building less than fifteen years old), which is not a basis for rejection of alternative sites or an excuse for adversely affecting a historic site either under §106, under §4(f) or under the regulations under these statutes

(e) The Finding attempts to justify its determination of a lack of adverse impact upon the MBTA's planned "[m]itigating measures" to the Arlington Street Church which do not eliminate or reduce the obstruction of view caused by the proposed

entrance to Arlington Street Station and by themselves constitute further adverse impact on the historic fabric of the church.

(f) The Finding rejected other sites based on a comparison of pedestrian traffic studies among possible entrance locations which were all rejected, but without any comparison of pedestrian traffic at the site selected for the proposed station entrance and without any documentation of said traffic at any of the sites.

(g) The Finding rejected other sites based on a purported concern that the sidewalk was too narrow, even though the sidewalk in rejected station entrance locations is scheduled to be made wider and the sidewalk in the presently proposed and approved station entrance location is scheduled to be narrowed.

(h) The Finding rejected proposed station entrance locations due to purported adverse traffic impacts, despite the Environmental Assessment (on which the Finding was apparently based) making clear that the adverse traffic impacts were only during construction, and despite the relatively common occurrence of such temporary adverse traffic impacts during construction in many, if not most, substantial downtown Boston and Back Bay construction projects.

18. Because feasible alternative locations for a new elevator entrance to Arlington Street Station exist which would not impact any historic interests, the approval and construction of the proposed new entrance in a location partially obstructing the view of the Arlington Street Church violates the §106 of the National Historic Preservation Act and §4(f) of the Department of Transportation Act of 1966.

19. The MBTA's proposed construction of a new entrance to Arlington Street Station in a location partially obstructing the view of the historic Arlington Street Church, when feasible alternative locations exist which would not impact any historic interests, would be a violation of federal law by the MBTA acting under color of law and implementing a decision officially adopted by the MBTA's officers.

20. Due to the inconsistencies and lack of sensible reasoning noted above, for other reasons on the face of the Finding, and for the lack of support for the Finding in the material presented to the Federal Transit Administration, the Finding is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law and unsupported by substantial evidence.

#### NABB STANDING

21. Plaintiff NABB is not only located in the same Back Bay Historic District as the historic Arlington Street Church, NABB is also a charitable corporation whose membership is composed of residents of the Back Bay Historic District.

22. One purpose of plaintiff NABB's existence as a charitable corporation is to preserve and protect the architectural beauty of Back Bay.

23. Plaintiff NABB includes an Architectural Committee which reviews and comments on projects that have an impact on the architectural and historic

interests and streetscapes of Back Bay, including preservation of the historic nature of Back Bay and its buildings.

#### APPROPRIATENESS OF INJUNCTIVE RELIEF

24. The construction of a permanent entrance structure to Arlington Street Station, which will partially obstruct the view of the historic Arlington Street Church, will cause irreparable harm to the plaintiff and its members.

25. The injury of partially obstructing the view of the historic Arlington Street Church will outweigh the harm to any defendant if injunctive relief is granted.

25. An injunction serves the public interest by protecting the historic views of the Arlington Street Church.

Wherefore the plaintiff demands

- (1) that the Court set aside the FTA Regional Administrator's May 14, 2004 Finding of No Significant Impact in the MBTA's proposed construction of a new stair and elevator entrance to Arlington Street Station
- (2) that a preliminary and final injunction be issued prohibiting the MBTA from constructing a new entrance to Arlington Street Station which partially obstructs the view of the Arlington Street Church, under §106 of the Federal Historic Preservation Act, under §4(f) of the Department of Transportation Act of 1966 and under 42 U.S.C. §1983
- (3) that the Court award costs to the plaintiff including attorney fees

(4) that the Court order such other relief as it deems just.

Plaintiff Neighborhood Association  
of the Back Bay, Inc.

By its attorney

A handwritten signature in black ink, appearing to read "Gerald Fabiano", is written over a horizontal line.

Gerald Fabiano BBO No. 157130  
Pierce, Davis & Perritano, LLP  
10 Winthrop Square 5th Floor  
Boston, MA 02110  
617-340-0950



JS 44 (Rev. 3/99)

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Neighborhood Association of the  
Back Bay, Inc.

(b) County of Residence of First Listed Plaintiff Suffolk  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Geral Fabiano  
Pierce, Davis & Perritano, LLP  
Ten Winthrop Sq. Boston, MA 02110  
(617) 350-0950 ext 103

**DEFENDANTS**

Federal Transit Administration,  
Massachusetts Bay Transit Authority

County of Residence of First Listed  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

**04 - 11550 EFH**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS1 (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

**V. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

for review of Federal Transit Administration's determination that proposed MBTA project had no adverse impact on historic structure, and under 42 U.S.C. § 1983

**VII. REQUESTED IN COMPLAINT:** ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

Declaratory

JURY DEMAND:

☐ Yes☒ No

against

and injunctive relief

MBTA.

**VIII. RELATED CASE(S) IF ANY**

JUDGE

DOCKET NUMBER

DATE July 12, 2004

SIGNATURE OF ATTORNEY OF RECORD

*Geral Fabiano*

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Neighborhood Association of the Back Bay, Inc. v. Federal Transit Administration et al.
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- |          |      |   |  |
|----------|------|---|--|
| —        | I.   | 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.  |  |
| <u>X</u> | II.  | 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.               | *Also complete AO 120 or AO 121 for patent, trademark or copyright cases |
| —        | III. | 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891. |  |
| —        | IV.  | 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.                                     |  |
| —        | V.   | 150, 152, 153.  |  |
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
- 
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☐ NO ☒
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Gerald FabianoADDRESS Pierce Davis & Perritano LLP, 10 Winthrop Sq., Boston, MA 02110TELEPHONE NO. 617-350-0950